(2) Supreme Court, U.S.
FILED

04-697 SEP 23 2004

OFFICE OF THE CLERK

No. _____

In the
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 2004

John Hudson, Petitioner,

v.

American Arbitration Association, Inc., Borg-Warner Protective Services Corporation and Burns International Security Services, Respondents.

On Petition for Rehearing En Banc to the United States Court of Appeals for the Fifth Circuit

---

PETITION FOR A WRIT OF CERTIORARI

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In Proper Person

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October 2004

QUESTION PRESENTED

Whether or not the arbitrator engaged in nonjudicial actions.

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IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 2004

JOHN HUDSON, Petitioner,
v.
AMERICAN ARBITRATION ASSOCIATION, INC;
BORG-WARNER PROTECTIVE SERVICES CORPORATION and
BURNS INTERNATIONAL SECURITY SERVICES, Respondents.

PETITION FOR REHEARING EN BANC TO
THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

John Hudson respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit in this case.

OPINIONS BELOW

The opinions of the court of appeals (App., infra,1a-2a) are reported, respectively, in 502 U.S. 9, (1991) and 149 F.3d (1998). The opinion of the district court (App., infra,6a-13a) is reported at 340 F.3d (2003).

JURISDICTION

The court of appeals denied the petition for rehearing en banc and entered its denial on July 19, 2004 (App., infra,3a-4a). The jurisdiction of this Court is invoked under 28 U.S.C. § 1651 (a).

STATUTORY PROVISION INVOLVED

Rule 60(b)(3) of the Federal Rules of Civil Procedure, provides, in relevant part, "this rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment or to set aside a judgment for fraud upon the court".

STATEMENT

Petitioner, John Hudson ("Hudson"), submitted his wrongful termination and defamation claims to arbitration under an agreement with his employer, Borg-Warner Protective Services Corporation and Burns International Security Services ("Borg-Warner," respectively). Hudson alleged that the decision by the American Arbitration Association ("AAA") was obtained by fraud, as a result of the arbitrator failing to take judicial actions on his issues for contempt or for breach of contract agreement for arbitration.

A. The Complaint of John Hudson

This case involves a "Pre-Dispute Resolution Agreement" made by the parties for arbitration. Under the provisions thereof,

provides, in relevant part, "despite any rule providing that any one party must bear the cost of filing and/or the arbitrator's fees, all costs of the American Arbitration Association and all fees imposed by any arbitrator hearing the dispute, will be shared equally between you and the company". Borg-Warner failed to pay its share of the filing fee. The "Pre-Dispute Resolution Agreement" further provides, that "each party agrees to pay costs and attorney's fees to the other party in the event of a breach of this agreement". Borg-Warner breached the contract agreement and forfeited its right to have arbitration. Respondent, the AAA failed to execute the "Pre-Dispute Resolution Agreement" for arbitration.

This case also involves a "subpoena duces tecum", that was signed by the arbitrator and served to Borg-Warner at Hudson request for the presentation of the "Bechtel Corporation Baton Rouge Cogeneration Project Technical Services Subcontract" in its entirety. On February 26, 2002, Borg-Warner failed to honor the "subpoena duces tecum" that was served on February 19, 2002.

These issues were before the arbitrator, that " Borg-Warner failed to honor the subpoena duces tecum" and had "breached the

contract agreement for arbitration". The arbitrator failed to take judicial actions on Hudson's issues for contempt or for breach of contract agreement for arbitration. The arbitrator ignored Hudson's issues which constitutes nonjudicial actions resulting in a decision obtained by **"fraud"**. As in *Hazel - Atlas Glass Co. v. Hartford Empire Co., 322 U.S. 997.*

B. Proceedings Below

In this case, the arbitrator issued a written ruling on April 12, 2002, in favor of Respondent, Borg-Warner. On February 26, 2003, Hudson filed a petition for relief from judgment under Fed. R. Civ. P. 60(b)(3) against the AAA and Borg-Warner. The district court entered its judgment on January 9, 2004, dismissing Hudson's claims as untimely under 9 U.S.C. § 12 and that Hudson has failed to state a claim against the AAA under Fed. R. Civ. P. 12(b)(6). On January 21, 2004, Hudson appealed that decision and the court of appeals entered its judgment on June 17, 2004, affirming the district court's dismissal of Hudson's claims. On June 29, 2004, Hudson filed a petition for rehearing en banc. The court of appeals denied Hudson's petition and entered its denial on July 19, 2004.

REASONS FOR GRANTING THE PETITION

The district court decision (App., infra, 6a-13a) in this case conflicts with *Mireles v. Waco, 502 U.S. 9 (1991),* a prior decision of this Court. Since the lower court departure, there is a need to call for an exercise of this Court's power of supervision. This case is a timely and rare opportunity to provide that supervision to address the issue previously determined by this Court. Moreover, the decision below is erroneous, and the issue that it addresses is important.

I. The Decision of the Court of Appeals Conflicts With a Prior Decision of this Court.

In *Mireles v. Waco, 502 U.S. 9(1991),* the Court concluded that "judicial and arbitral immunity can be overcome only where the judge (or arbitrator) is engaged in nonjudicial actions or where the judge's (or arbitrator's) actions are taken in the absence of any jurisdiction." A judge (or arbitrator) is not immune from liability for **nonjudicial actions, i.e.,** actions not taken in judge's (or arbitrator's) judicial capacity.

In this case, the Arbitrator Kenneth E. Milam failed to take judicial actions on Hudson's issues for contempt or for breach of contract agreement for arbitration. If in fact, had the arbitrator taken judicial actions on Hudson's issues for contempt or for breach of contract agreement for arbitration, Hudson would have prevailed in arbitration. Since the arbitrator engaged in nonjudicial actions the AAA is not immune from liability, and is therefore liable unto Hudson for damages that are reasonable and or just.

II. The Court of Appeals Interpretation of Federal Rule of Civil Procedure 60(b)(3) Is Erroneous

Although Hudson is not attempting to relitigate the same cause of action adjudicated in the arbitration proceeding, his claims arise out the AAA's alleged fraudulent conduct during the arbitration. The court of appeals erred in over looking the facts and evidence presented in this case that show where the arbitrator engaged in nonjudicial actions.

In *United States v. Beggerly 524 U.S. 38, 1868*, the Court held that an "independent action" for relief from judgment is available only to prevent a grave miscarriage of justice.

Federal Rule of Civil Procedure 60(b)(3) allows a party to move for relief from a judgment obtained by fraud. The petition for relief from judgment filed by Hudson is an "independent action" taken against the AAA and Borg-Warner for a decision obtained by fraud. Hudson had one (1) year from the date of the award to file a lawsuit.

III. The Question Presented Is Important

In *Mireles,* the Court addressed whether judicial immunity protected a state court judge from a civil action instituted by an attorney who alleged that the defendant judge ordered police officers to use "excessive force" to seize and compel him into court. In determining its decision, the Court concluded that "judicial and arbitral immunity can be overcome only where the judge (or arbitrator) is engaged in nonjudicial actions or where the judge's (or arbitrator's) actions are taken in the absence of any jurisdiction." The state court judge was granted judicial immunity for actions taken in judge's judicial capacity. A judge (or arbitrator) is not immune from liability for **nonjudicial actions, i. e.,** actions not taken in judge's (or arbitrator's) judicial capacity.

In this case, the arbitrator engaged in nonjudicial actions for actions not taken in arbitrator's judicial capacity. This case presents a rare opportunity for this Court to address the issue previously determined by the Court to secure and maintain uniformity of the Court's decisions. Therefore, the Court should grant the petition.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully Submitted:
John Hudson
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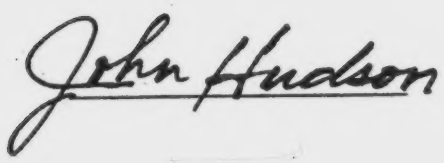
IN PROPER PERSON



IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

FILED
June 17, 2004

No. 04-30061
Summary Calendar

JOHN HUDSON,

Plaintiff-Appellant,

VERSUS

AMERICAN ARBITRATION ASSOCIATION, INC.; BORG-WARNER PROTECTIVE SERVICES CORPORATION; BURNS INTERNATIONAL SECURITY SERVICES,

Defendants-Appellees.

Appeal from the United States District Court for
The Middle District of Louisiana
(USDC No. 03-CV-150-C)

Before REAVLEY, JOLLY and DENNIS, Circuit Judges.

PER CURIAM:

Plaintiff John Hudson submitted his wrongful termination and defamation claims to arbitration under an agreement with his employer Borg-Warner Protective Services. The arbitrator returned a decision on April 12, 2002. Plaintiff appealed that decision on February 26, 2003. The district court dismissed his claims under FED. R. CIV. P. 12(b)(6). We affirm the district court's dismissal as the relevant statute of limitations provides only three months to appeal from arbitration orders. 9 U.S.C. § 12. As Hudson was appealing an arbitration order rather than a district court order, the district court properly applied § 12 rather that FED. R. CIV. P. 60(b).

Any equal protection claims against the district court are barred by judicial immunity. Mireless v. Waco, 502 U.S. 9, 11-12 (1991). Any equal protection claims or claims of misdeeds by the American Arbitration Association are barred by arbitral immunity. Hawkins v. Nat'l Ass'n of Sec. Dealers, Inc., 149 R.3d 330, 332 (5th Cir. 1998).

AFFIRMED.

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

FILED
July 19, 2004

No. 04-30061
Summary Calendar

JOHN HUDSON,

Plaintiff-Appellant,

v.

AMERICAN ARBITRATION ASSOCIATION, INC.; BORG-WARNER PROTECTIVE SERVICES CORPORATION; BURNS INTERNATIONAL SECURITY SERVICES,

Defendants-Appellees

Appeal from the United States District Court for the Middle District of Louisiana, Baton Rouge

ON PETITION FOR REHEARING EN BANC

(Opinion 6/17/04, 5 Cir., _____, _____ F.3d _____)

Before REAVLEY, JOLLY, and DENNIS, Circuit Judges.

PER CURIAM:

(X) Treating the Petition for Rehearing En Banc as a Petition for Panel Rehearing, the Petition for Panel Rehearing is DENIED. No member of the panel nor judge in regular active service of the court having requested that the court be polled on Rehearing En Banc (FED. R. App. P. and 5TH CIR. R. 35), the Petition for Rehearing En Banc is DENIED.

( ) Treating the Petition for Rehearing En Banc as a Petition for Panel Rehearing, the Petition for Panel Rehearing is DENIED. The court having been polled at the request of one of the members of the court and a majority of the judges who are in regular active service not having voted in favor (FED. R. App. P. and 5TH CIR. R. 35), the Petition for Rehearing En Banc is DENIED.

ENTERED FOR THE COURT:

_____

UNITED STATES CIRCUIT JUDGE

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

FILED
June 17, 2004

No. 04-30061
Summary Calendar

D.C. Docket No. 03-CV-150-C

JOHN HUDSON,

Plaintiff-Appellant,

v.

AMERICAN ARBITRATION ASSOCIATION, INC.; BORG-WARNER PROTECTIVE SERVICES CORPORATION; BURNS INTERNATIONAL SECURITY SERVICES,

Defendants-Appellees

Appeal from the United States District Court for the Middle District of Louisiana, Baton Rouge

Before REAVLEY, JOLLY, and DENNIS, Circuit Judges.

JUDGMENT

This cause was considered on the record on appeal and the briefs on file.

It is ordered and adjudged that the judgment of the District Court is affirmed.

IT IS FURTHER ORDERED that plaintiff-appellant pay to defendants-appellees the costs on appeal to be taxed by the Clerk of this Court.

ISSUED AS MANDATE: JULY 27, 2004

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF LOUISIANA

FILED
04 JAN-9 AM 10:23

JOHN HUDSON

CIVIL ACTION
NO. 03-150-C

VERSUS

THE AMERICAN ARBITRATION ASSOCIATION, BORG-WARNER PROTECTIVE SERVICES CORPORATION AND BURNS INTERNATIONAL SECURITY SERVICE

RULING ON MOTIONS TO DISMISS

This matter is before the court on a Motion to Dismiss (Doc. No. 6) filed by defendant, Pinkerton sued as Borg-Warner Protective Services Corporation and Burns International Security Services; and a Motion to Dismiss (Doc. No. 12) filed by defendant, the American Arbitration Association. Plaintiff, John Hudson, has filed opposition. There is no need for oral argument. Jurisdiction is allegedly based on diversity, 28 U.S.C. § 1332.

BACKGROUND

This action arises out of an arbitration between plaintiff, John Hudson, and his former employer, Borg-Warner Protective Services Corporation, now known as Burns International Security Services

(collectively referred to as "Borg-Warner".) As a result of a pre-dispute resolution agreement signed by plaintiff with Borg-Warner, plaintiff's claims of wrongful termination and defamation against Borg-Warner were decided by an arbitrator, Kenneth E. Milam. On April 12, 2002, the arbitrator issued a written ruling in favor of Borg-Warner, denying plaintiff's claims.

On February 26, 2003, plaintiff filed the present claim naming as defendants, Borg-Warner and the American Arbitration Association ("AAA"). In his suit, plaintiff alleges that the award in favor of Borg-Warner was contrary to the law and requested the lifting of the arbitrator's decision. Plaintiff alleges that Borg-Warner's failure to pay half of the arbitration administrative fee was a breach of the contract and forfeited Borg-Warner's right to have arbitration. Plaintiff also alleges the following 1) that the AAA failed to exercise due diligence in executing the terms of the agreement for arbitration with regard to the payment of administrative fees by both parties; 2) that the arbitrator discriminated against plaintiff because of his race; 3) that the

arbitrator acted in an arbitrary and capricious manner in making a direct contradiction of plaintiff's testimony; 4) that AAA committed intentional acts which were the proximate cause of loss – the acts of willful deception, failing to exercise due professional care in administering a fair and impartial hearing with regard to plaintiff's claims for wrongful termination and defamation; and 5) that the AAA failed to find Borg-Warner in contempt or in violation of breaching the agreement for arbitration.

STANDARD FOR MOTION TO DISMISS

When considering a motion to dismiss under Fed. R. Civ. P. 12(b)(6), the Court accepts as true all well-pleaded allegations in the complaint, and views them in a light most favorable to the plaintiff. However, conclusory allegations or legal conclusions masquerading as factual conclusions will not suffice to prevent a motion to dismiss.

Unlike a motion for summary judgment, a motion to dismiss should be granted only when it appears without a doubt that the plaintiff can prove no set of facts in support of his claims that would entitle

him to relief. The United States Court of Appeals for the Fifth Circuit has noted that dismissal for failure to state a claim is disfavored and will be appropriate only in rare circumstances. When the facts and dates alleged in the complaint indicate that the complaint is barred by the applicable statute of limitations, a motion to dismiss for failure to state a claim should be granted.

BORG-WARNER'S MOTION TO DISMISS

Borg-Warner now moves for dismissal, alleging that plaintiff's claims are barred by the statute of limitations.

Title 9 United States Code, Section 10 provides, in pertinent part, as follows:

(a) In any of the following cases the United States court in and for the district wherein the award was made may make an order vacating the award upon the application of any party to the arbitration –

(1) Where the award was procured by corruption, fraud, or undue means;

(2) Where there was evident partiality or corruption;

(3) Where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced; or

(4) Where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.

Title 9 United States Code, Section 12 provides, in pertinent part, as follows:

Notice of a motion to vacate, modify, or correct an award must be served upon the adverse party or his attorney within three months after the award is filed or delivered.

In **Brown v. WITCO Corporation**, 340 F.3d 209, 218 fn. 8 (5th Cir. 2003), the Fifth Circuit stated that "the [Federal Arbitration Act]'s three month statute of limitations period governs the period of time within which a party must file a lawsuit in federal court asking the court to vacate, modify, or correct an arbitration award.

The record reflects that plaintiff received his arbitration decision on April 12, 2002, from the AAA. Plaintiff filed his Petition for Relief From Judgment on February 26, 2003, over ten months later. Therefore, the court concludes that plaintiff is barred by his failure to bring this action in a timely manner as required by 9 U.S.C. § 12.

AAA'S MOTION TO DISMISS

Through its motion to dismiss, the AAA seeks a dismissal of any claims against the AAA because arbitrators and arbitral institutions are immune from suit. The AAA correctly expressed in its motion that it is unclear whether plaintiff has attempted to assert claims against the AAA separate from the claims to vacate the arbitration award. Assuming plaintiff has asserted separate claims against the AAA, the court concludes that the AAA is immune "from civil liability for the acts of its arbitrators in the course of conducting contractually agreed-upon arbitration proceedings." Rule 12(b) of the Federal Rules of Civil Procedure authorizes dismissal based upon a dispositive issue of law, such as judicial or arbitral immunity. Because of the AAA's immunity from civil liability, the court finds that plaintiff has failed to state a claim against the AAA. Accordingly,

IT IS ORDERED that Pinkerton's, sued as Borg-Warner Protective Service Corporation and Burns International Security Services, Motion to Dismiss (Doc. No. 6) is GRANTED.

IT IS ORDERED that the American Arbitration Association's Motion to Dismiss (Doc. No. 12) is GRANTED.

Baton Rouge, Louisiana, this 8th day of

RALPH E. TYSON, JUDGE
UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF LOUISIANA

FILED
04 JAN-9 PM 2:16

JOHN HUDSON

CIVIL ACTION

VERSUS

NO. 03-150-C

THE AMERICAN ARBITRATION ASSOCIATION, BORG-WARNER PROTECTIVE SERVICES CORPORATION AND BURNS INTERNATIONAL SECURITY SERVICE

JUDGMENT

For the Written reasons assigned and filed herein:

IT IS ORDERED ADJUDGED AND DECREED that the motions to dismiss filed on behalf of defendants are hereby GRANTED and this action is hereby dismissed.

All other pending motions in this action are hereby dismissed, as moot.

Baton Rouge, Louisiana, January 9, 2004.

RALPH E. TYSON
UNITED STATES DISTRICT JUDGE

Supreme Court U.S
FILED
MAR 14 2005
OFFICE OF THE CLERK

(1)

No. 04-697

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 2004

John Hudson, Petitioner,

v.

American Arbitration Association, Inc;
Borg-Warner Protective Services Corporation and
Burns International Security Services, Respondents.

On Petition for Rehearing En Banc to the
United States Court of Appeals for the Fifth Circuit

PETITION FOR REHEARING OF ORDER DENYING CERTIORARI

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March 14, 2005

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 2004

John Hudson, Petitioner,

v.

American Arbitration Association, Inc;
Borg-Warner Protective Services Corporation and
Burns International Security Services, Respondents.

On Petition for Rehearing En Banc to the
United States Court of Appeals for the Fifth Circuit

Petitioner, John Hudson, respectfully moves this Court for an order vacating the denial of his petition for a writ of certiorari entered on February 22, 2005, and granting the petition. As grounds for this motion, the Court failed to consider the Petition for Rehearing En Banc to the United States Court of Appeals for the Fifth Circuit in this case.

The petition for certiorari previously filed herein presented the question whether or not, "the arbitrator engaged in nonjudicial

actions." In support of the question presented, which include the evidence of material facts that proves beyond any reasonable doubt that the arbitrator engaged in nonjudicial actions.

1. This case involves a "Pre-Dispute Resolution Agreement" (App., infra, 2a-3a) made by the parties for arbitration. Under the provisions thereof, provides, in relevant part, "despite any rule providing that any one party must bear the cost of filing and/or the arbitrator's fees, all costs of the American Arbitration Association and all fees imposed by any arbitrator hearing the dispute, will be shared equally between you and the company." Respondent, Borg-Warner Protective Services Corporation and Burns International Security Services ("Borg-Warner") failed to pay its share of the filing fee. The "Pre-Dispute Resolution Agreement" further provides, that "each party agrees to pay costs and attorney's fees to the other party in the event of a breach of this agreement." Borg-Warner breached the contract agreement and forfeited its right to have arbitration.

In the arbitration proceeding, on page 13 of the transcript (App., infra, 4a) the petitioner stated to the Arbitrator Kenneth E. Milam, that "according to the contract that allows us to arbitrate this matter, all fees are shared equally between the company and me, the employee. The company has failed to pay its share of the filing fees. So I also filed an additional claim amended to that. It was dated April 9, 2001." On page 14 of the transcript (App., infra 5a) the Arbitrator Milam said, "As far as I'm concerned with regard to the fees, that's something that needs to be taken up with Mr. Trevino and the American Arbitration Association." On page 141 of the transcript (App., infra 6a), the petitioner attempted to introduce as evidence the "Pre-Dispute Resolution Agreement" for arbitration by stating that,". . . it's a contract that indicates that all fees for the arbitration matters to be shared equally between the company and the employee." Thereafter, Arbitrator Milam said, "I understand that, and I understand your position. And I think I told you when the hearing started that I'm not really here

to rule on that issue. So based on that, I'm going to sustain the objection to G-18. As I indicated to you, this is something that you need to take up with an American Arbitration Association director."

Based on the arbitrator's own words, clearly show where the Arbitrator Kenneth E. Milam engaged in nonjudical actions for actions not taken in arbitrator's judicial capacity.

CONCLUSION

For the reasons set forth in this petition for rehearing, as well as in the petition for certiorari previously filed, rehearing and certiorari should now be granted.

Respectfully submitted,

John Hudson
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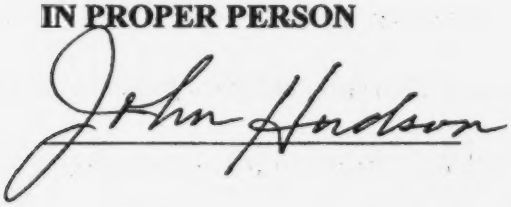
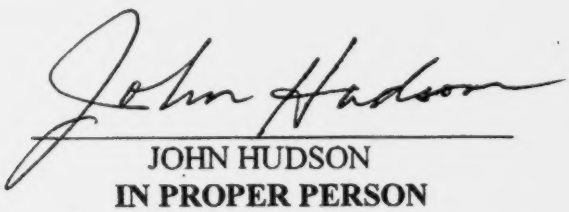
(225) 278-5058
IN PROPER PERSON



CERTIFICATE OF COUNSEL

Pursuant to Rule 44.2, I hereby certify that the foregoing Petition for Rehearing of Order Denying Certiorari is presented in good faith and not for delay, and is limited to the grounds specified in Rule 44.2.



JOHN HUDSON
IN PROPER PERSON

Supreme Court of the United States

No. 04-697

John Hudson,

Petitioner

v.

American Arbitration Association, Inc., et al.

ON PETITION FOR A WRIT OF CERTIORARI to the United States Court of Appeals for the Fifth Circuit, No. 04-30061.

ON CONSIDERATION of the petition for a writ of certiorari herein to the United States Court of Appeals for the Fifth Circuit.

IT IS ORDERED by this Court that the said petition is denied.

February 22, 2005

A true copy WILLIAM K. SUTER
Test:
Clerk of the Supreme Court of the United States
By_____
Deputy

PRE-DISPUTE RESOLUTION AGREEMENT
(Please read carefully)

It is Borg-Warner Protective Services Corporation's (the "Company") desire, whenever possible, to resolve disputes in a fair and expeditious manner, reflecting the interests of the concerned parties. Although there is no outstanding dispute now between the parties, it is recognized that, as with any relationship, differences may arise which may not be resolved, and regarding which the parties may seek relief before an administrative agency, court or arbitrator.

In consideration of the Company employing you, you and the Company each agree that, in the event either party (or its representatives, successors or assigns) brings an action in an agency or court of competent jurisdiction relating to your recruitment, employment with, or termination of employment from the Company, the party bringing in such action agrees to waive his, her or its right to a trial by jury, and further agrees that no demand, request or motion will be made for a trial by jury. Each party agrees to pay costs and attorneys' fees to the other party in the event of a breach of this agreement.

In consideration of the Company employing you, you further agree that, in the event that you seek relief in an agency or court of competent jurisdiction for a dispute covered by this Agreement, the Company may, at any time within 90 days of the service of your complaint upon the Company, at its sole option, require all or part of the dispute to be arbitrated by one arbitrator in accordance with the rules of the American Arbitration Association governing labor arbitration. You agree that the option to arbitrate any such dispute is governed by the Federal Arbitration Act, and fully enforceable. You understand and agree that, if the Company exercises it option, any dispute arbitrated will be heard solely by the arbitrator, and not by a court or agency, that the decision of the arbitrator will be final and binding on both parties, and that such decision will bar any further relief of any kind in any forum of all issues that were or could have

been brought, except those the Company specifically excluded from such arbitration. The company and you agree that, despite any rule providing that any one party must bear the cost of filing and/or the arbitrator's fees, all costs of the American Arbitration Association and all fees imposed by any arbitrator hearing the dispute, will be shared equally between you and the company. If you refuse to arbitrate after the Company has demanded you do so, and if a court orders arbitration, you agree to pay the Company's legal costs, including attorney's fees, incurred in enforcing this agreement. To insure the speedy resolution of any dispute, you agree that you will submit your claim(s) to the American Arbitration Association within sixty (60) days of the Company's demand for arbitration under this agreement, and that failure to do so will forever bar any claim that was or could been asserted in any forum whatsoever.

This pre-dispute resolution agreement will cover all matters directly or indirectly related to your recruitment, hire, employment or termination of employment by the Company; including, but not limited to, claims involving co-employees, but excluding Worker's Compensation claims. You further agree that this agreement covers all parties to a lawsuit to which the company is a party, but only the company has standing to enforce this agreement to avoid piecemeal litigation.

The right to a trial, and to a trial by jury, is of value.

YOU MAY WISH TO CONSULT AN ATTORNEY PRIOR TO SIGNING THIS AGREEMENT. IF SO, TAKE A COPY OF THIS FORM WITH YOU. HOWEVER, YOU WILL NOT BE OFFERED EMPLOYMENT UNTIL THIS AGREEMENT IS SIGNED AND RETURNED BY YOU.

BORG-WARNER PROTECTIVE SERVICES CORPORATION

_____ _____ By_____ _____

Signature Date (Company Employee) Date

_____ _____

Print Name (Applicant) Print Name (Company Employee)

PRE-DISPUTE RESOLUTION AGREEMENT

MR. HUDSON

Yes, Sir. Also, according to the contract that allows us to arbitrate this matter, all fees are shared equally between the company and me, the employee. The company has failed to pay its share of the filing fees. So I also filed an additional claim amended to that. It was dated April 9, 2001.

MR. MILAM:

As far as I'm concerned with regard to the fees, that's something that needs to be taken up with Mr. Trevino and the American Arbitration Association.

MR. MILAM:

What is the purpose of that document?

MR. HUDSON:

Because it's a contract that indicates that all fees for the arbitration matters to be shared equally between the company and the employee.

MR. MILAM:

I understand that, and I understand your position. And I think I told you when the hearing started that I'm not really here to rule on that issue. So based on that, I'm going to sustain the objection to G-18. As I indicated to you, this is something that you need to take up with an American Arbitration Association Director.